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June 26, 2013

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20554

***Via Electronic Filing***

**Re: MB Docket No. 09-182, 2010 Quadrennial Review; MB Docket No. 07-294,  
*Diversification of Ownership in the Broadcasting Services***

Dear Ms. Dortch,

On June 25, 2013, Matt Wood, Derek Turner, Lauren Wilson, and Danielle Tepper of Free Press met with Sarah Whitesell, Media Legal Advisor for Acting Chairwoman Clyburn, and Law Clerk Keenan Adamchak, to discuss issues in the above-captioned dockets. Separately, Matt Wood spoke by telephone with Ms. Whitesell on June 26 to summarize points described below.

During the meeting, we presented our doubts as to the adequacy of the study submitted by the Minority Media and Telecommunications Council in these dockets on May 30, 2013.

- The MMTC study is deeply flawed in numerous ways. It draws sweeping conclusions that even a properly designed qualitative study could not.
- One major flaw in the MMTC study is its failure to adequately describe its sample.
  - The study surveyed what the instrument describes as minority and/or women station owners, and non-minority and/or non-women station owners, in markets with newspaper-broadcast combinations and without such combinations. The study's subjects were drawn from single-station owners, owners with multiple stations in a single market, and group owners who have multiple stations in multiple markets. Thus the study appears to have been designed to facilitate matched pair analysis. However, the results of the study are not presented through the lens of a matched pair analysis. In fact, in a major omission, the study fails to describe the distribution of its sample, as shown in the figure below:

Owner Type	Cross-owned Market	Non-cross-owned Market	total
Minority and/or Female Owner	?	?	8
Non-Minority and/or Non-Female Owner	?	?	6
total	?	?	?/14

This failure to describe the sample distribution is problematic because the study draws the sweeping conclusion that cross-ownership has a “negligible” impact on ownership diversity, despite the fact that the study did find owners who discussed the competitive impacts of cross-owned operations on their stations (see below).

- As shown in the figure above, the MMTC study solicited responses to a series of questions from 7 female and/or minority broadcast station owners, 6 non-female and/or non-minority broadcast station owners, and 1 former minority station owner.
  - However, the study does not indicate how many of these stations – if any – are television broadcast stations.
  - The study does not indicate how many markets were investigated.
  - The study does not indicate what markets each of the responding stations is in, or even the general market category (*e.g.*, large, medium or small).
  - The study does not indicate how many of the survey respondents are located in markets with newspaper-TV combinations, with newspaper-radio combinations, with both types of combinations, or with no cross-ownership.
  - The study apparently combines the responses of female Caucasian owners with female and male racial and/or ethnic minority owners. The study also conflates female and minority ownership. While there is overlap in some of the traits of female and minority owners (*e.g.*, both types of owners are more likely to be single station owners than are non-female/non-minority owners), a proper study would have investigated these categories separately.
- Thus the number of interview subjects is small, and we have no information about the demographic or market distribution of the respondents. This information is critical to assessing the study’s validity. Its absence also raises concern about the sweeping conclusions drawn, given the study’s own mixed results concerning the impact of newspaper broadcast cross-ownership on female and minority owners (see below).
- Another major flaw in the MMTC study is the conflation of newspaper-radio cross-ownership with newspaper-TV cross-ownership. Though the study draws conclusions about the impact of cross-ownership on female and minority-owned broadcast television ownership, the study’s questions actually focus primarily on the radio market. In fact, there is no clear indication that the study’s author even interviewed minority television station owners. The impact of cross-ownership on the entry barriers and exit pressures faced by female and minority-owned companies is almost certainly different in the radio and television markets, and each deserves to be studied separately.
- The study (for some unstated reason) only looked at markets with *grandfathered* cross-ownerships.

- To the extent that the study does address newspaper-television cross-ownership, it actually identifies owners that described the competitive impacts of these combinations.
  - 3 of the 14 survey respondents are located in a market with a newspaper-TV-and-radio cross-ownership. These 3 all cited the effects of that combination on their own operations. One of these 3 is a female and/or minority-owned operation.
    - The study does not indicate how many of the 14 total respondents are operating in a cross-owned market, but does indicate that some portion of the 7 current minority and/or female-owned operations were in non-cross-owned markets. Thus, the study's universe of female and/or minority station owners operating in a cross-owned market is fewer than 7.
    - In fact, because we are not given any information about the sample distribution, it is *possible* that in 100 percent of the cases where MMTC asked a minority television owner about cross-ownership in a market with a newspaper-TV combination, that owner reported it being harmful.
- This study at best provides some interesting anecdotal information about the struggles of female and/or minority-owned broadcasters. However, some of the factors that these owners identify as barriers are outcomes exacerbated by consolidation, and in particular consolidation caused by cross-ownership.
- The study is no substitute for quantitative empirical research. The quantitative studies performed to date show strongly that as markets become more concentrated, diverse ownership declines.
  - While qualitative research can inform policymaking, the results of a single, small (and undefined) sample survey that conflated the impacts of two very different types of cross-ownership are not dispositive. In this particular case, the results are not even suggestive, and in no way support the study's conclusion that "the impact of cross-media ownership on minority and women broadcast ownership is probably negligible."
  - The MMTC study analyzed perceptions of the current state of affairs as described in responses to a survey. MMTC defended its use of the "unaided recall" technique, claiming that if respondents cite an issue as important without any prompting, one may assume that issue's importance. It does not follow, however, that if respondents fail to cite an issue, one may assume that issue's negligibility.
    - Further, it appears from the description of the survey methodology that in order to increase the response rate, the authors abandoned phone interviews in favor of an online survey. An online survey, however, is not appropriate for a study that seeks to draw sweeping conclusions based on a subject's unaided recall.

MMTC acknowledges that its study is neither comprehensive nor dispositive, yet the study and MMTC's characterization of its findings make sweeping conclusions about the impact of the Commission's cross-ownership rules on ownership diversity. But for the reasons discussed

above (and other technical flaws we intend to highlight in response to the Commission's public notice), MMTC's study fails to satisfy the Third Circuit's mandate in *Prometheus II* that the Commission collect the data necessary for informed policy-making.<sup>1</sup>

In light of the Third Circuit's requirement that the Commission better consider the effects of its rules on diverse ownership, the Commission cannot consider the MMTC study sufficient and thereby serve the public interest or the court's mandate.

We file this *ex parte* notice today, pursuant to Section 1.1206(b) of the Commission's rules. If you have any questions regarding this submission, please do not hesitate to contact me.

Respectfully submitted,

/s/ Matthew F. Wood

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cc: Sarah Whitesell

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<sup>1</sup> See *Prometheus Radio Project v. F.C.C.*, 652 F.3d 431, 469-72 (3d Cir. 2011).